

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION NO.868/2006

Anis Ahmed s/o Abdul Majid Ahmed,
aged about 44 years,
Resident of Mangalwari Road,
Sadar, Nagpur.

..

APPLICANT.

. V E R S U S .

1. The State of Maharashtra,
through Police Station Officer,
Police Station Sadar, Nagpur.

2. Ulhas @ Babli s/o Balwant Meshram,
aged about 50 years,
Occupation: Business,
Resident of Bezonbagh, Kadbichowk,
Nagpur.

..

RESPONDENTS.

Mr. A.M.Gordey, Advocate, for the Applicant.
Mr. A.B.Choudhary, Public Prosecutor with
Mrs. B.H.Dangre, APP for Respondent No.1.
Mr. R.R.Paranjape, Advocate, for Respondent no.2.

...

CORAM : K. J. ROHEE, J.
DATED : JULY 6, 2006.

ORAL ORDER:

By this application under Section 482 of the Code of Criminal Procedure, the applicant seeks to quash Crime No. 3086/2006 dated 9.3.2006 under Section 3 (1) (x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and Section 323 of Indian Penal Code registered on the basis of the report lodged by respondent no. 2 (hereinafter referred to as "the complainant") on 8.3.2006.

2. The applicant is a highly qualified person and is a State Cabinet Minister in Government of Maharashtra.

3. On 8.3.2006 the complainant lodged a report at P.S. Sadar (Nagpur) alleging therein that on 7.3.2006 around 3 p.m. he gave good wishes from his mobile to Mr. Sanjay Mukherjee (Collector, Nagpur) on the latter's birthday. from his mobile. The complainant expressed his desire to greet the Collector personally by offering flower bouquet. Thereupon the Collector replied that he may come to the office at 3.30 p.m. Accordingly the complainant went to the Collector Office and waited outside the chamber of the Collector. Around 3.30 p.m. the applicant came there. When the complainant

wished him, the applicant asked the complainant as to how he had come there. The complainant replied that he had come there on private work. Thereafter the applicant entered the chamber of the Collector and the complainant waited outside the chamber. Around 4.30 or so when the complainant learnt that the Collector has come, he entered the chamber of the Collector with flower bouquet. At that time the applicant turned back and asked the complainant as to whether it was the birthday of the Collector. When the complainant replied in the affirmative, the applicant got enraged and gave two fist blows on the left shoulder of the complainant. The applicant also gave filthy abuses to the complainant. However, the complainant ignored it. The complainant gave flower bouquet to the Collector and wished him happy birthday. When the complainant was leaving the chamber, the applicant abused the complainant on caste and gave two fist blows on his chest. At that time S.D.O Mrs. Asha Pathan, Deputy Collector Mr. Umesh Kale and 4-5 Deputy Collectors were present there. The applicant abused the complainant on caste and humiliated him though the applicant was knowing that the complainant is a member of Scheduled Caste

4. The report further shows that around 9.30/10 p.m. he received a phone call from the Collector expressing excuse

and apologized on behalf of the Minister (the applicant). Thereafter the complainant received a phone call from the applicant himself informing him that he was joking and apologized. The applicant also requested the complainant not to lodge report with the Police.

5. On the basis of the said report, Crime No. 3086/2006 under Section 3 (1) (x) of the Atrocities Act and 323 of I.P.C. was registered at P.S. Sadar (Nagpur) on 9.3.2006. According to the applicant his political rival Mr. Nitin Raut has set up his colleague for lodging false and malafide report against the applicant with intent to secure removal of the applicant from the ministry and to get himself accommodated. The applicant challenged registration of the said crime against him mainly on the ground that the report lodged by the complainant does not disclose any cognizable offence under the Atrocities Act.

6. I have heard Mr. A.M.Gordey, Advocate for the applicant, Mr. A.B.Choudhary, Public Prosecutor for respondent no.1/State and Mr. R.R. Paranjape, Advocate for respondent no.2/Complainant.

7. The learned counsel for the applicant submitted that in order to attract the provisions of Sections 3 (1) (x) of the

Atrocities Act, three conditions are required to be fulfilled. Firstly the insult or intimidation should be to a member of Scheduled Caste or Scheduled Tribe; secondly the insult or intimidation should be in any place within public view and thirdly the offender should be a member of Scheduled Caste or Scheduled Tribe. Unless these three conditions are fulfilled, the offence under Section 3 (1) (x) of the Atrocities Act cannot be said to have taken place.

8. The learned counsel for the applicant submitted that though F.I.R. is not the encyclopaedia, but it must disclose the facts constituting the offence under Section 3 (1) (x). If any of the requisites mentioned above are missing from the F.I.R., no offence can be said to have been made out. He submitted that for taking cognizance of the offence punishable under Section 3(1)(x) of the Atrocities Act, there are three catch words, viz. the caste of the complainant, the place within public view and the caste of the offender. There should be a positive assertion about the caste of the complainant and a negative assertion about the caste of the offender. All these ingredients should be reflected in the F.I.R. itself. The averments in the F.I.R. alone can be looked into in order to see whether an offence punishable under Section 3 (1)(x) of the Atrocities Act is made out. He submitted that no external aid for that purpose can be pressed into service and

no extraneous evidence can be looked into.

9. In support of the above submissions, the learned counsel for the applicant relied on **Manohar Martandrao Kulkarni and another .vs. State of Maharashtra and Ors. 2005 ALL. MR (Cri.)2602**, which is based on the decision of the Division Bench dated 20.4.2001 in Criminal Writ Petition No.49/2001 (**Anant Vasantlal Sambre .vs. State of Maharashtra**). The Division Bench had taken a view that if the F.I.R. does not contain an averment that the accused does not belong to Scheduled Caste or Scheduled Tribe, the offence under Section 3 of the Atrocities Act cannot be registered. On the basis of this in **Manohar Martandrao Kulkarni's** case, it was held that :

“It is a precondition that person committing the alleged offence must not be belonging to Scheduled Castes or Scheduled Tribes. In the report filed in the Police Station, there ought to have been some averment indicating that the offender does not belong to Scheduled Castes or Scheduled Tribes. In the absence of such averment or any other material before the Police Station Officer for coming to the conclusion that the

accused named in the said report does not belong to Scheduled Castes or Scheduled Tribes, the offence under Section 3 of the Atrocities Act cannot be registered."

10. In **Manohar Martandrao Kulkarni's** case the decision of Single Bench dated 7/8th November, 2000 in **Bai @ Laxmibai Nivrutti Poul and ors. .vs. State of Maharashtra** has also been referred to in which it was laid down that :

"If the caste of the complainant is not disclosed in the F.I.R., the police authorities could not be said to have any material to invoke the powers under Chapter XII of the Criminal Procedure Code and to commence investigation considering the complaint to be a cognizable complaint".

11. In **Madanlal Bhaiyalal Pardeshi .vs. State of Maharashtra and another 2006 ALL MR (Cri) 787**, the Single Bench of this Court held that :

"the plain reading of the

Section makes it clear that the offence alleged is offence committed as against a member of a Scheduled Castes by the person who does not belong to a Scheduled Castes , then the F.I.R. must disclose that the offence committed by the members, who do not belong to a Scheduled Castes and the offence is committed against a member of a Scheduled Caste."

12 In **Shri V.P.Shetty .vs. Sr.Inspector of Police and another 2005 ALL MR (Cri) 2384** in which it is held that :

"it is now well settled that , while considering the challenge to the F.I.R. , the Court has to consider the contents of the F.I.R. itself and accused is not entitled to call upon the Court to rely upon any additional materia. That exercise can be done at the time of the trial in case the charge-sheet is filed and if the petitioner is invited to face the trial. But it is too premature for this Court to consider any extraneous method at this stage."

13. On the backdrop of the above case law, we have to read the report in the present case. A bare perusal of the report reveals that there is a specific averment in it that the complainant is a worker belonging to Scheduled Caste. So though the caste of the complainant is not mentioned in the report, there is a specific averment to the generic term that the complainant is a member of Scheduled Caste. It may be noted that Section 3 (1)(x) of the Atrocities Act refers to a member of Scheduled Castes or Scheduled Tribes. As such an averment in the report that the complainant is a member of Scheduled Caste is enough to attract the provisions of Section 3 (1) (x) of the Atrocities Act.

14. It was further submitted by the learned counsel for the applicant that the report nowhere mentions the caste of the applicant and thus an important ingredient of the offence under Section 3 (1) (x) is missing.

15. It is true that there is no reference to the caste of the applicant in the report. However, the very name of the applicant discloses that he belongs to Muslim religion. It may be remembered that the applicant is a public figure being the representative of the people and is widely known in the region.

16. As stated in Advanced Law Lexicon [Book No.1, 3rd Edition 2005] Caste is a word applied to the distinctions of birth, tribe, and occupation, which separate the Hindus into different groups, and preclude their eating or drinking together; their using the same vessels; their intermarrying; and other relation of social life.

17. In the New International Webster's Comprehensive Dictionary [1996 Edition] caste is described as one of the hereditary classes into which Hindu society is divided in India.

18. In New Encyclopaedia [Volume 3, 15th Edition] it is stated that caste systems are moral systems that differentiate and rank the whole population of a society in corporate units (Castes) generally defined by descent, marriage, and occupation. Elaborately differentiated and ranked caste systems have developed especially in the regional societies of India and among Hindu.

19. Thus it would be seen that caste system is a unique feature of Hindu religion.

20. The learned counsel for the applicant placed reliance on **Hamid Khan and ors. .vs. State of Maharashtra and**

another – Criminal Application No. 1297/2006 decided on 4.5.2006 in which the F.I.R. under Section 3 (1) (x) of the Atrocities Act was quashed on the ground that the caste of the accused was not mentioned in the F.I.R. In that case the applicants appeared to be Muslims. A perusal of the said judgment shows that the learned Single Judge has not taken into consideration the aspect that the applicants are Muslims and has not dealt this point in details. The learned Single Judge proceeded only on the ground that the caste of the accused is not mentioned in the F.I.R. without considering that the applicants are Muslims. Hence the said case is not helpful to the applicant.

21. The words “Castes” or “Tribes” in the expression “Scheduled Castes” and “Scheduled Tribes” are not used in the ordinary sense of the terms but are used in the sense of the definitions contained in Articles 366 (24) and 366 (25) of the Indian Constitution. In this view, a caste is a Scheduled Caste or a tribe is a Scheduled Tribe only if they are included in the President's Orders issued under Articles 341 and 342 for the purpose of the Constitution.

22. Section 3 of the Constitution (Scheduled Castes) Order, 1950 provides that no person who professes a religion different from the Hindu, the Sikh or the Buddhist religion

shall be deemed to be a Member of Scheduled Caste.

23. In view of this provision, there is no question of mention of the caste of the applicant who belongs to Muslim religion. It would not be out of place to mention that it was pointed out by the learned Public Prosecutor that there is no averment in the petition that the applicant is a member of Scheduled Caste or Scheduled Tribe.

24. The cases relied upon by the learned counsel for the applicant about mentioning of the caste of the offender are, therefore, not applicable to the present case. In the present case, as stated earlier, there was no need to mention the caste of the applicant. Thus it cannot be said that the ingredients of the offence under Section 3 (1) (x) of the Atrocities Act are not fulfilled.

25. The learned counsel for the applicant lastly submitted that in order to constitute an offence under Section 3 (1) (x) of the Atrocities Act, the alleged insult or humiliation must be in any place within public view.

26. In **Alka A Misra .vs. J.P.Shoke 2003 (3) Mh.L.J. 62** it was held that for bringing section 3 (1)(x) of the Atrocities Act in play, there should be an allegation that the

accused intentionally insulted the member of the Scheduled Caste or Scheduled Tribe in any place within public view.

27. The learned counsel for the applicant submitted that in the instant case, the alleged incident of abuses on caste and beating took place in the chamber of the Collector. The chamber of Collector is not a place accessible to public. There is restricted entry in the chamber of the Collector and nobody can enter the Collector's chamber without permission. As such it cannot be said that the alleged incident took place within public view. In support of this submission the learned counsel for the applicant relied on **V.P. Shetty's case (cited supra)** in which it is held as under:-

“The expression “within public view” has specific meaning and in order to attract the provisions of law under Sec. 3 (1)(x) of the Atrocities Act, the acts amounting to insult or humiliation to the member of Scheduled Castes or Scheduled Tribes should be visible and audible to the public. Otherwise it would not amount to an offence under the said provision of law. Considering the same and considering the allegations in the

complaint which relate to the acts by the petitioner in the closed cabin of the petitioner and in the absence of any stranger, can hardly be said to be accusations by the petitioner to the complainant "within the public view".

28. In the present case, the alleged incident took place in the Chamber of the Collector. It is true that there might be restricted entry in the chamber of the Collector. However, it is stated that the Collector holds meetings in his chamber, he takes hearing of proceedings before him in the chamber, he meets the public in his chamber. Thus it cannot be said that the chamber of the Collector is a secluded place not accessible to public. Secondly at the time of the alleged incident, SDO and several Deputy Collectors were present in the chamber of the Collector. Though they might have come to the chamber for official work, it cannot be said that the incident did not take place within public view.

29. From the above discussion, it is apparent that all the ingredients of the offence under Section 3 (1) (x) of the Atrocities Act are made out by the report dated 8.3.2005 lodged by the complainant. Thus there was nothing wrong in taking cognizance of the offence and registering the F.I.R.

against the applicant on the basis of the said report. Hence I do not find any merit in the petition. The same is , therefore, dismissed.

30. The learned counsel for the applicant prayed that protection from arrest should be extended to the applicant for a period of four weeks in order to enable him to approach the Apex Court. The learned Public Prosecutor and the learned counsel for the complainant strongly opposed the prayer. However, considering the peculiar circumstances of the case, I think it expedient to grant protection from arrest to the applicant for a period of four weeks from today.

(K. J. ROHEE, J.)

.....